

APPLICANTS:**Robert & Kelly Kastens****BEFORE THE****ZONING HEARING EXAMINER****REQUEST:** A variance to Section 267-36B, Table V, and Section 267-23C(1)(a)(2) of the Harford County Code, to allow a deck to encroach within the required front yard setback**FOR HARFORD COUNTY****BOARD OF APPEALS****HEARING DATE:** November 10, 2004**Case No. 5450****ZONING HEARING EXAMINER'S DECISION****APPLICANTS:** Robert & Kelly Kastens**LOCATION:** 912 Buckland Place, Southampton subdivision, Bel Air
Tax Map: 41 / Grid: 3D / Parcel: 397 / Lot: 169
Third Election District (3rd)**ZONING:** R2 / Urban Residential**REQUEST:** A variance pursuant to Section 267-36B, Table V, and Section 267-23C(1)(a)(2) of the Harford County Code, to allow a deck to encroach within the required front yard setback (22 foot setback proposed).**TESTIMONY AND EVIDENCE OF RECORD:**

Robert Kastens, Co-Applicant, testified that he is seeking permission to construct a deck to the rear of his townhouse, located at 912 Buckland Place, Southampton subdivision, Bel Air. Mr. Kastens explained that his property is unique in that he is required to comply with two front yard setbacks. The property fronts on Buckland Place, but also abuts Crescent Knoll Drive to the rear. Accordingly, the two front yard setback requirements reduce the usable space on his parcel.

Mr. Kastens and his wife wish to construct a deck which is similar, if not identical, to many other decks constructed on townhomes in their subdivision. Of the four townhome units in his block, two townhomes have requested and received similar variances.

The deck would be 15 feet by 20 feet in dimension. The dimensions would be identical to two other decks in the four townhome unit. The deck would be made of Trex, with wooden railings.

A review of the application reveals that the Applicants are proposing an encroachment of approximately 8 feet into the required setback to the rear of their home. As Section 267-23C(1)(a)(2) of the Harford County Code allows a 3 foot encroachment, Mr. Kastens and his wife are, accordingly, requesting a 5 foot variance.

Mr. Kastens testified that, in his opinion, no adverse harm would result to any adjoining neighbor or property if the requested variance were granted.

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A review of the Harford County Department of Planning and Zoning Staff Report indicates that the property is a double-frontage lot, facing Buckland Place and abutting Crescent Knoll Drive to the rear. Accordingly, two front yard setbacks impact the property. Further limiting the usable space was the decision of the builder to elect to construct the home 27 feet back from Buckland Place, placing the dwelling in the center of the lot, when the dwelling actually could have been constructed much closer to Buckland Place. As a result, little room is left to construct a reasonably sized deck.

The Staff Report notes that eleven nearby lots have received Board of Appeals approval for similar relief.

No opponent appeared or presented evidence in opposition to the requested variance.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
 - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*

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- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

Section 267-23C(1)(a)(2) of the Harford County Code reads:

“(a) *The following structures shall be allowed to encroach into the minimum yard requirements, not to exceed the following dimensions:*

- (2) *Bay windows, balconies, chimneys or porches: three (3) feet.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants reside in a single-family townhouse, one in a block of four similar townhomes. The Applicants’ property is similar to their neighbors’ properties in being impacted by a unique feature. The properties, including the subject property, front onto a street, and accordingly are required to maintain a front yard setback. They also abut a public street to their rear, and accordingly are required to maintain a front yard setback to the rear. Compounding this fairly uncommon characteristic was the decision of the builder in constructing the Applicants’ dwelling almost directly in the middle of the lot, which reduced the usable space on both the front and rear sides of the house. These unusual features of the property combine to make the property unique.

As a result of all these unique features the Applicants are unable to construct a deck similar to other decks in the neighborhood, and similar to many others in Harford County. The proposed deck will be 15 feet by 20 feet, constructed of Trex with a wooden railing. The size, appearance and location of the deck are normal and typical of others throughout Harford County.

A practical difficulty is suffered by the Applicants as they are unable to construct a normal feature to their home, as have others in the neighborhood. It is also important to note that the townhomes are all constructed with a first floor back-door, which open approximately 10 feet off the ground. Obviously, these doors have no other purpose other than to access a reasonably sized deck to be constructed at a later time. (See photographs, Attachment 8).

It is further found that the relief requested is the minimum necessary to alleviate this practical difficulty. The construction of the proposed deck, which will look out over a public street and which will impact a mere 8 feet into a 30 foot setback, will cause no harm to the neighbors or neighborhood.

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CONCLUSION:

Accordingly, it is recommended the requested variance be granted, subject to the Applicants obtaining all necessary permits and inspections.

Date: December 15, 2004

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner